

**BEFORE THE OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA**

In Re The Complaint of	DECISION OF THE
Rasheed Shabazz,	OPEN GOVERNMENT COMMISSION
Complainant	OF THE CITY OF ALAMEDA
The City of Alameda,	
Respondent	

The above entitled matter came on for hearing and a decision by the Open Government Commission of the City of Alameda (“OGC”) under the Sunshine Ordinance of the City of Alameda, Section 2-93.2 (b), Alameda Municipal Code (“AMC”).

Facts

On April 21, 2021, the complainant, Rasheed Shabazz, submitted a request to the City of Alameda seeking the following records under the California Public Records Act (“CPRA”):

All constituent correspondence to and from and any comments by Council Member Trish Herrera Spencer using the Nextdoor social media platform.

In his request, Mr. Shabazz noted that he expected a response from the City within ten day of his request. The City did not respond to Mr. Shabazz’s April 21, 2021 email.

On October 16, 2021, Mr. Shabazz sent an email to the City Clerk asking for a “follow-up” to his April 21st request. On October 19, 2021, Lisa Cooper, a paralegal in the City Attorney’s Office responded to Mr. Shabazz, stating that “there was a miscommunication between the Clerk’s office and myself as to who was going to respond to your PRA.” Ms.

Cooper also informed Mr. Shabazz that “[t]he City of Alameda does not monitor or maintain any records of Councilmembers use of NextDoor. Any such records would be in the care, custody and control of NextDoor.”

On October 26, 2021, Mr. Shabazz filed a complaint under the Sunshine Ordinance. His complaint contained two allegations: (1) that the City did not respond to his request within the statutory ten-day timeframe and (2) that the City failed to produce the requested NextDoor records on the basis that NextDoor was the custodian of the requested records.

After Mr. Shabazz filed his complaint, the City learned that the City’s Public Information Officer maintains an agency NextDoor account. While councilmembers cannot initiate posts on that account, they can make comments on City posts, and reply to other comments, just as the general public can do. On October 28, 2021, the City produced to Mr. Shabazz copies of comments and replies from “Trish H.” (Councilmember Herrera Spencer) made in connection with ten City posts on the City’s agency NextDoor account. During the Complaint hearing, the parties referenced an exchange of further correspondence and a subsequent production of records by the City, but neither party included those documents in the hearing file for OGC review.

Procedure

Under the Sunshine Ordinance, when an official complaint has been filed, the OGC hears the complaint and renders a formal written decision. The Complainant and the City shall appear at a hearing, during which the OGC considers the evidence and the arguments of the parties before making its decision. AMC §2-93.2 (b), (c). The parties have the opportunity to file written materials and present evidence.

In this case, both parties filed written materials prior to the hearing, which was held on December 6, 2021 before all five OGC commissioners. The parties both appeared at the hearing,

which was held via teleconference, pursuant to Section 54953 of the California Government Code. Rasheed Shabazz spoke on his own behalf. Assistant City Attorney John Lê spoke on behalf of the City.

Discussion and Decision

The OGC considered the complaint's two allegations separately.

A. Timeliness

The OGC made a factual finding that the City did not timely respond to the Complainant's CPRA request, but ultimately rejected this claim on procedural grounds because the complaint was not timely filed.

Specifically, Section 2-93.2 of the Sunshine Ordinance states that "any person may file a complaint against any violation of the Sunshine Ordinance no more than fifteen (15) days after the alleged violation." Mr. Shabazz's complaint was filed on October 26, 2021. Mr. Shabazz made his initial CPRA request on April 21, 2021 and the City had until May 1, 2021 to respond to that request. *See* Cal. Gov't C. §6253(c). The City did not respond to Mr. Shabazz's request by the May 1, 2021 deadline. However, Mr. Shabazz had 15 days from May 1, 2021—the date of the City's failure to respond to him--to then file a Sunshine Ordinance complaint as to the City's untimely response. Because Mr. Shabazz waited until October 26, 2021 to file his complaint, his allegation as to the City's untimeliness was time-barred under Section 2-93.2 and was therefore rejected on procedural grounds.

The OGC noted that the City did not yet have the electronic NextRequest tracking system in place at the time that the Complainant's CPRA request was received. The City Clerk's correspondence to Complainant, included in the hearing file, explained that the City's implementation of NextRequest should prevent the type of miscommunication which led to the City's failure to respond to this initial CPRA request within the statutorily-designated timeframe.

B. Failure to Produce Records

The OGC sustained, in part, Mr. Shabazz's second allegation-- that the City failed to produce responsive NextDoor records. As a preliminary matter, the OGC determined that there was a distinction between the City's NextDoor account and Councilmember Herrera Spencer's personal NextDoor account.


The OGC found that the City was obligated to produce copies of Councilmember Herrera Spencer's comments on the City's NextDoor account and that it had initially failed to produce those records to the complainant. While the evidence presented at the hearing indicated that the City ultimately disclosed Councilmember Herrera Spencer's comments on the City's NextDoor account from July 2020 to October 2021 on October 28, 2021, the City initially denied the complainant access to those responsive records prior to the filing of this Sunshine Ordinance Complaint. In producing the summary to Complainant, the City indicated the failure to disclose those records was inadvertent. (Attachment 3 to Respondent's Position Statement: "I do not believe staff was aware of [the City's NextDoor "agency" account]'s existence and/or aware that comments are permitted on this account.")

The OGC made the following recommendation to the City to cure or correct this violation pursuant to Section 2-93.8 of the Sunshine Ordinance: that the City consider maintaining an index that is accessible to the City Attorney's Office and City Clerk, of all of its social media accounts maintained as official communication channels of the City.

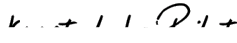
As to Mr. Shabazz's contention that the City had the obligation to obtain and produce posts and comments from Councilmember Herrera Spencer's personal social media account (NextDoor), the OGC declined to make any affirmative finding or recommendation. The OGC based its decision on the absence of controlling case authority on the applicability of the CPRA

to an official's personal account social media content and similarly absent guidance in the City's Sunshine Ordinance. The Commission recognized that existing case authority requires the production of an official's personal account emails and text messages in certain circumstances, but that such authority does not necessarily extend to personal account social media content.

Dated: January 10, 2022

DocuSigned by:



Ruben Tilos, Chair

DocuSigned by:


Krystal LoPilato, Vice-Chair

DocuSigned by:


Serena Chen, Commissioner

DocuSigned by:


Melodye Montgomery, Commissioner

DocuSigned by:


Carmen Reid, Commissioner